



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1995

Honorable James M. Kuboviak
Brazos County Attorney
County Courthouse
Bryan, Texas 77803

Letter Opinion No. 95-054

Re: Imposition and collection of rollback
taxes after a change in use in land receiving
agricultural appraisal (ID# 31306)

Dear Mr. Kuboviak:

Article VIII, sections 1-d and 1-d-1 of the state constitution, and provisions of chapter 23 of the Tax Code adopted pursuant thereto, allow for appraisal of certain agricultural land for property tax purposes on the basis of its productive capacity rather than its market value. Tex. Const. art. VIII, §§ 1-d, 1-d-1. When the use of land which has qualified for agricultural appraisal changes, however, an additional, or "rollback," tax is imposed in amounts equal to the difference between the taxes paid during the past three or five years—depending on which particular provisions are applicable—and the taxes that would have been due during that time had the land been appraised at market value. *Id.* § 1-d; Tax Code §§ 23.46, .55. Interest is charged as well. Tax Code § 23.55.

You allude to a situation where an owner of land qualified for agricultural appraisal under section 1-d-1 attempts to sell the land to a purchaser who intends to change the use of the land to nonagricultural uses at some time in the future, such that a rollback tax on the property would be triggered when the change of use takes place.¹ You advise:

When [the purchaser] attempts to arrange for financing or a title policy, [the purchaser] is told that the rollback tax liability for the land must be satisfied as a condition of financing or issuance of the title policy. When [the purchaser] attempts to pay the liability, the tax collector refuses the payment because no rollback tax is owed At the point of sale, the land has not been diverted from agricultural use. The lenders and title companies want to collect the

¹Sections 1-d and 1-d-1 of article VIII, adopted respectively in 1966 and 1978, both provide for special appraisal of agricultural land, and are implemented by subchapters C and D of chapter 23 of the Tax Code respectively. Section 1-d and 1-d-1, and the Tax Code subchapters adopted under them, differ somewhat in their scope and procedures. See generally Attorney General Opinion JM-949 (1988). For instance, under section 1-d and the provisions of Tax Code section 23.46, a "rollback" tax is triggered by either diversion to nonagricultural use or sale. Under section 23.55, however, a rollback tax on land designated for agricultural use under section 1-d-1 is triggered only by a change in use.

rollback tax as if the change of use took place at sale and pay it in closing the sale.

You ask first with regard to this scenario whether "a person other than the chief appraiser [may] determine that a change of use of land qualified under article VIII, section 1-d-1 has taken place." The "chief appraiser" is the "chief administrator of the appraisal office" of the appraisal district established in each county. Tax Code §§ 6.01, .05. Tax Code section 23.55, which provides for the imposition of a rollback tax when there is a change in use in land which had been appraised under subchapter D--the provisions which implement section 1-d-1--makes it clear, we think, that it is the chief appraiser who makes the determination of such change in use so as to trigger imposition of the rollback tax. Subsection (e) of section 23.55 provides that "[a] determination that a change in use of the land has occurred is made by the chief appraiser."² See also Attorney General Opinion DM-220 (1993).

You also ask whether "a lender or title company [may] collect a rollback tax, even though the change of use determination has not occurred, at the time of closing?" By distinguishing situations where "the parties . . . enter an agreement for the purchaser to hold the seller harmless and escrow funds against a future tax liability," we understand you to refer in your question to the *official* collection of taxes on behalf of the taxing unit. We do not understand you to ask about, and do not address here, the propriety of "collection" of anticipated taxes pursuant to escrow arrangements among the parties such as you refer to, but think it clear that only the "official or employee of a taxing unit responsible for collecting taxes" has the authority to "collect" a tax in the official sense used in the Tax Code. See Tax Code §§ 1.04(15) ("Collector" means the officer or employee responsible for collecting property taxes for a taxing unit . . .), 31.06 ("collector may accept a check or money order in payment of taxes"), .071 ("collector . . . shall accept conditional payments of taxes . . . that are subject to a pending challenge").

You ask finally: "If a lender or title company collects and tenders to the collector an amount in satisfaction of future liability, may the collector accept it?" You say that "[e]ssentially, this is a question of whether the collector has the authority to accept payment of a tax that has not been imposed."

²See also § 23.55(a), (b). Subsection (a) provides in part:

If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land for each of the five years preceding the year in which the change in use occurs that the land was appraised as provided by this subchapter

Subsection (b) provides in part:

A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax

A tax collector's authority to receive payment of taxes must rest on specific authorization. See *Orange County v. Texas & N.O. R.R.*, 80 S.W. 670 (Tex. Civ. App.--1904) (collector not authorized to receive prepayment of taxes for which assessment rolls had not yet been delivered to him). Under section 23.55, section 1-d-1 rollback taxes and interest are not imposed until a change of use occurs with respect to land qualified for agricultural appraisal. Tax Code § 23.55(a). When the chief appraiser determines a change of use has occurred, he notifies the taxpayer of the determination, and if the determination is not timely protested, or if on protest the determination is upheld, "the assessor of each taxing unit prepare[s] and deliver[s] a bill for the additional taxes plus interest." *Id.* § 23.55 Those taxes and interest are then due and become delinquent "if not paid before the next February 1 that is at least 20 days after the date the bill is delivered." *Id.*

You point to only one provision, Tax Code section 31.072, which might arguably authorize the tax collector to accept payment of anticipated rollback taxes and interest before the change of use triggering their imposition has occurred. However, it appears that section 31.072, which authorizes the collector to contract with a property owner for the latter to deposit anticipated taxes in an escrow account, was intended to apply to the normal property tax collected annually rather than to rollback taxes.

Regular tax bills for a tax year--which is defined in section 1.04(13) as the calendar year--are sent out by the assessor on "October 1 or as soon thereafter as practicable" of the tax year, are due on receipt, and become delinquent February 1 of the following year. *Id.* §§ 31.01(a), .02(a). Section 31.072, the escrow provision at issue here, permits an arrangement whereby the property owner makes installment payments toward the total tax for the tax year which he will be billed for in October of the tax year. *Id.* § 31.072(c). Subsection (b) of section 31.072 provides in part that the "contract may not be made before October 1 of the year preceding the tax year for which the account is established." Subsection (d) directs a collector who enters an escrow account contract to provide therein for "deposits that would provide, as of the date the collector estimates the tax bill for the property will be prepared, a total deposit that is not less than the amount of taxes estimated by the collector or the amount of taxes imposed on the property by the affected taxing units in the preceding year, whichever is less."

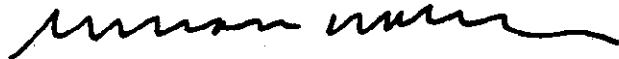
The alternative amount which subsection (d) of section 31.072 permits the collector to require in the contract--"the amount of taxes to be imposed on the property . . . in the preceding year"--would plainly have no appropriate application with regard to prepayment of rollback taxes, to which the "preceding year's" taxes would bear no meaningful relation. Even if the other provisions of section 31.072 could arguably be made to comport with the escrowing of anticipated rollback taxes in certain circumstances, the referenced provisions of subsection (d), which are of mandatory application under the section, cannot. We therefore conclude that section 31.072 was not intended to authorize the collector's escrowing of rollback taxes. Nor do we find any other provisions which would authorize a collector to accept payment of rollback taxes

prior to the tax's imposition. *Cf., e.g., id. § 31.071* (collector's acceptance of conditional payments made in order to maintain protest or appeal).

S U M M A R Y

Only the chief appraiser has authority to make the determination under Tax Code section 23.55 of a change in use so as to trigger imposition of the rollback tax on land previously receiving agricultural appraisal. Only the "official or employee of a taxing unit responsible for collecting taxes" has the authority to "collect" a tax as that term is used in the Tax Code. A tax collector has no authority to accept payment of rollback taxes prior to the taxes' imposition.

Yours very truly,



William Walker
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Opinion Committee